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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,229	11/09/2001	Robert M. Laughlin	4633.3816	9864

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EXAMINER

LUDLOW, JAN M

ART UNIT PAPER NUMBER

1743

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/045,229

Applicant(s)

LAUGLIN, ROBERT M.

Examiner

Jan M. Ludlow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,6,8-12,14 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,8-12,14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 3, 2005 has been entered.

1. Claims 1, 3, 5-6, 8-12, 14, 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, "user facility for providing..." is unclear as to the metes and bounds of this limitation. Note that "for providing..." is a statement of intended use, and as long as the facility is structurally capable of the intended use, the limitation is satisfied. It is the examiner's position that any facility is structurally capable of selling or distributing air tanks. In claim 12, "breathing air producer user facility" is unclear as to the metes and bounds of this phrase. In that the instant application discloses ambient air as a breathing air to be tested, it is the examiner's position that any ambient air site satisfies this limitation. In claim 12, "said breathing air producer user facility's computer" lacks antecedence.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, 5, 9, 10-12, 14-16, 18, 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Banet et al.

Banet teaches a method and apparatus for testing gases emitted by automobiles. A sensor (col. 3, lines 8-12) is provided in a car manifold or tailpipe (instant means for collecting and temporarily storing a gas sample), coupled to a microprocessor and wireless transmitter (col. 2, lines 50-59) for transmitting data to a host computer, e.g., web server, where the data is compared to EPA or other standards and a pass or fail message is transmitted to the user by electronic text, data, or voice message or Internet posting (Col. 3, lines 28-34, Figures 1 and 7). It is the examiner's position that the

server is maintained by a "qualified third party". With respect to the gas analyzer being "electrically coupled" to the server, the analyzer is coupled by a wireless transmitter coupling as in the instant invention, see, e.g., instant claim 3. The coupled server and microprocessor constitute a network. Alternatively to the wireless coupling, a serial interface may be used (col. 3, line 3). Sensed analytes include hydrocarbons and oil is a hydrocarbon, thus it is the examiner's position that oil is tested for (col. 3, line 12). Note that in claim 1, "for providing..." is a statement of intended use, and as long as the facility is structurally capable of the intended use, the limitation is satisfied. It is the examiner's position that any facility is structurally capable of selling or distributing air tanks. In that the instant application discloses ambient air as a breathing air to be tested, it is the examiner's position that any ambient air site satisfies, "breathing air producer user facility" of claim 12.

4. Claims 6, 8, 10, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banet.

Banet fails to teach a printer or printing results or explicitly teach testing for oil.

It would have been obvious to provide a printer and print the results in order to provide and maintain a hard copy independent of possible data corruption in a computer system as was known in the art. With respect to the alternative rejection of claim 10, it would have been obvious to test for oil in order to determine if combusted or uncombusted oil is among the hydrocarbons emitted by an automobile because oil is a pollutant used in an automobile.

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5. Claims 1,3,5,6,8-12,14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sunshine in view of Banet.

Sunshine teaches method and apparatus for monitoring ambient air by sampling and analyzing using a field device, sending data to a central server, and sending data back to the field device via the internet using wired or wireless technologies ([0007], [0011], [0026], [0030], [0041]).

Sunshine fails to teach comparison of the data to a standard for certification.

Banet teaches monitoring a gas sample in the field, transmitting data to a server for comparison to standards of acceptable contamination, and certifying that the gas sample has less than the acceptable level of contamination.

It would have been obvious to provide a comparison to acceptable gas quality standards in the apparatus and method of Sunshine in order to certify the gas test quality results as taught by Banet, e.g., to warn of hazardous chemicals in the ambient air.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's arguments filed August 3, 2005 have been fully considered but they are not persuasive.

8. Applicant argues that there is no teaching in Banet to make breathing air testing and certification a quick and simple process, but the instant disclosure includes ambient air as an example of breathing air (p. 1, line 22), and exhaust is part of the ambient air. Note that in claim 1, "for providing..." is a statement of intended use, and as long as the

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facility is structurally capable of the intended use, the limitation is satisfied. It is the examiner's position that any facility is structurally capable of selling or distributing air tanks. Applicant argues that the instant invention alleviates the need for transferring a sample from a compressor or compressed air tank to a remote location, but there are no limitations in the instant claims to compressors or compressed air tanks. Further, with respect to the apparatus claims, it is unclear which features, if any, define over an exhaust analyzer as taught by Banet. Note, for example, that carbon dioxide and monoxide, hydrocarbons and water are tested for in both the instant invention (p. 10) and in emissions testing.

9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
October 17, 2005